

United States General Accounting Office

Report to the Chairmen, House and
Senate Committees on Armed Services

PROCUREMENT

DOD Efforts Relating to Nondevelopmental Items



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National Security and
International Affairs Division

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The Honorable Sam Nunn
Chairman, Committee on Armed Services
United States SenateThe Honorable Les Aspin
Chairman, Committee on Armed Services
House of Representatives

In response to a requirement in section 907(c) of the Defense Acquisition Improvement Act of 1986 (Public Law 99-661), we evaluated the Department of Defense's (DOD) efforts to ensure that its requirements for the procurement of supplies are fulfilled through procurement of nondevelopmental items (NDI) to the maximum practicable extent. Section 907 of the act (referred to as the NDI statute) defines NDI to include items that are either available in the commercial marketplace or otherwise already developed and in use by a governmental entity in this or an allied country. The definition also includes those types of items that require only minor modification to meet DOD's needs or are currently being produced.

The idea that the federal government could benefit by purchasing commercial products has been advanced for a number of years. In 1972, the Commission on Government Procurement recommended that the government buy more commercial products, rather than rely on products designed to meet unique government specifications or purchase descriptions. The NDI statute expanded and strengthened the existing emphasis on procuring commercial products to cover all NDI, including previously developed items such as weapon systems or components. Potential benefits of buying commercial products and other NDI include reduction or avoidance of research and development costs, more rapid delivery and fielding of items, and increase in competition.

The NDI statute reflects the Congress' desire that all impediments or restrictions to the maximum practicable acquisition of NDI, including those in regulations and procedures, be identified and removed. In approving the NDI legislation, the House Armed Services Committee reported that DOD had made little progress in fulfilling the congressional policy as reflected in statute to "promote the use of commercial products whenever practicable." The Committee also said that DOD needed to more forcefully take advantage of products in the commercial marketplace.

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Industry officials and representatives have stated that various federal and agency regulations and DOD practices impede DOD's procurement of NDI and that DOD's actions have not sufficiently addressed these impediments. These officials were generally unable, however, to provide evidence indicating the extent or significance of the claimed impediments we reviewed.

Our review focused on nine claimed impediments to DOD's procurement of NDI. We concluded that the following seven claimed impediments involved significant issues: (1) insufficient management emphasis on NDI, (2) the need for more NDI training, (3) inappropriate cost or pricing data policies, which pertain to negotiation of prices, (4) problems with acquisition regulations that prescribe policies and procedures relating to commercial products, (5) short-sighted policies and practices regarding government rights to technical data, (6) inappropriate and inconsistent use of various contract provisions, and (7) inappropriate use of military specifications.

Although DOD has taken some actions to emphasize the procurement of NDI, we believe that DOD needs to do more to ensure that its requirements for supplies are defined and fulfilled through NDI to the maximum practicable extent. One example of DOD's actions is that it has worked with the Office of Federal Procurement Policy (OFPP) on developing a legislative proposal to authorize establishment of a separate set of streamlined, commercial-style procedures for the acquisition of commercial products. OFPP expects the proposal to be presented as a new administration initiative in March 1989.

DOD officials have been reviewing and revising a DOD directive, manual, and pamphlet on NDI. These documents would provide internal guidance on NDI acquisition policy and procedures, but their issuance has been delayed for several months because the Office of the Secretary of Defense (OSD) personnel have not provided the level of effort on NDI that had been intended. We believe these documents are informative and would help ensure that DOD personnel are aware of methods of obtaining commercial products and other NDI.

DOD does not have data to show how much or what kind of NDI it procures or whether such procurements have increased. Although DOD officials expressed concerns about the costs and usefulness of collecting such data, they have not made a final decision on this matter. We believe such information would be useful in (1) identifying the amount and types of commercial products DOD already purchases, (2) identifying



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the types of products for which additional NDI opportunities may exist, and (3) assessing the effectiveness of actions taken to ensure that DOD procures NDI to the maximum practicable extent.

DOD needs better assurance that its acquisition personnel receive sufficient instruction so that NDI is procured to the maximum practicable extent. While DOD has provided NDI training courses for program managers, contracting officials, and other DOD personnel, these courses were limited in terms of the lecture time devoted to NDI and the number of personnel who received the training. DOD officials we met with stated that more training on NDI is needed.

Industry officials expressed concerns that competitive purchases of commercial items by the government can later unfairly cause contractors to lose exemptions from cost or pricing data requirements based on established catalog or market prices. Although the contractor ultimately received the exemption in the only example of this problem industry brought to our attention, undue administrative burden appeared to have been placed on the contractor. We believe, and DOD officials agreed, that DOD needs to examine if acquisition regulations should be changed to ensure that contractors do not face possible loss of such exemptions only because the amount of previous sales of the same type of items to the government based on adequate price competition exceed established regulatory thresholds.

Recommendations

We recommend that the Secretary of Defense take action to:

- Expedite issuance of internal guidance on NDI procurement.
- Collect data to measure and report on the nature and trends of NDI procurement.
- Assess training efforts and ensure that sufficient training is provided to acquisition personnel so that commercial products and other NDI are procured to the maximum practicable extent.
- Determine if a regulatory change is needed relating to exemptions from cost or pricing data requirements based on established catalog or market prices. That is, DOD should examine whether changes to the regulations are needed to ensure that contractors do not face possible loss of such exemptions only because the amount of previous sales of the same type of items to the government based on adequate price competition exceed established regulatory thresholds.

Appendix I provides background and historical information on NDI. Appendix II provides our assessment of claimed impediments to DOD's increased procurement of NDI and DOD's actions to increase its use of NDI. Appendix III describes our objectives, scope, and methodology for this review.

As requested by your Offices, we did not obtain official DOD comments on this report. However, we discussed our findings with DOD officials at headquarters and at the activities visited, as well as industry and OFPP officials, and have included their views where appropriate.

We are sending copies of this report to the Chairmen, House and Senate Committees on Appropriations, House Committee on Government Operations, and Senate Committee on Governmental Affairs. Copies are also being sent to the Secretaries of Defense, the Army, Navy, and Air Force; the Director, Office of Management and Budget; and other interested parties.

This report was prepared under the direction of Paul F. Math, Director for Research, Development, Acquisition, and Procurement Issues. Other major contributors are listed in appendix IV.



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Contents

Letter		1
Appendix I		8
Introduction	DOD's Report on NDI	8
	Historical Perspective	9
	Benefits of NDI	10
	Potential Risks of NDI	11
	OFPP Activities	11
Appendix II		13
Evaluation of Claimed	Management Emphasis	13
Impediments to DOD's	Notification and Training of DOD Acquisition Personnel	18
Procurement of NDI	on NDI	
	Cost or Pricing Data	22
	Claimed Problems Related to FAR Part 11	29
	Government Rights to Technical Data	31
	Use of Varying Contract Provisions	33
	Use of Military Specifications	39
	Modification of Items to Meet NDI Needs	42
	Multiple Award Schedule	44
	Conclusions	45
	Recommendations	46
Appendix III		47
Objectives, Scope, and		
Methodology		
Appendix IV		50
Major Contributors to	National Security and International Affairs Division,	50
This Report	Washington, D.C.	
	Office of the General Counsel	50
Table	Table II.1: Information Provided by DOD Instructors on	20
	NDI Training	
Figure	Figure II.1: Information on the 205 Different Clauses	36
	Used in Three Contracts, Each Awarded by a	
	Different Activity, to Procure Oscilloscopes.	

Contents

Abbreviations

DARC	Defense Acquisition Regulatory Council
DFARS	Defense Federal Acquisition Regulation Supplement
DOD	Department of Defense
DSMC	Defense Systems Management College
FAR	Federal Acquisition Regulation
GSA	General Services Administration
MAS	Multiple Award Schedule
NDI	nondevelopmental items
OFPP	Office of Federal Procurement Policy
OSD	Office of the Secretary of Defense

Introduction

Section 907 of the Defense Acquisition Improvement Act of 1986 established a statutory preference for NDI in DOD. The act requires the Secretary of Defense to ensure that DOD defines and fulfills its requirements for the procurement of supplies through NDI to the maximum practicable extent. The statute, which was enacted in November 1986, defines NDI as any

- item of supply that is available in the commercial marketplace;
- previously developed item of supply that is in use by a department or agency of the United States, a state or local government, or a foreign government with which the United States has a mutual defense cooperation agreement;
- item described above that requires only minor modification to meet the procuring agency's requirements; or
- item currently being produced that does not meet the above requirements solely because it is not yet in use, or is not yet available in the commercial marketplace.

The NDI statute required the Secretary of Defense to submit a report to the House and Senate Armed Services Committees within 1 year of the statute's enactment (1) identifying actions taken by DOD to implement the NDI statute, (2) identifying all statutory or regulatory impediments to NDI acquisition, and (3) recommending any appropriate legislation to promote maximum use of NDI acquisition. The NDI statute also required the Secretary to take appropriate actions to remove impediments to NDI procurement, prescribe implementing regulations within 180 days of the statute's enactment, and implement the NDI statutory requirements through the Under Secretary of Defense for Acquisition.

DOD's Report on NDI

In response to the act's requirement, the Secretary of Defense submitted DOD's report, NDI Acquisition, Progress, and Impediments, on December 18, 1987. In transmitting the report, DOD said that it had made considerable progress in improving its ability to buy and use NDI, but many areas still needed attention. DOD added that it would continue to pursue an aggressive program to make greater use of NDI.

The report discussed five impediments to DOD's procurement of NDI and eight DOD actions taken to promote NDI. Although the report said DOD did not identify any specific regulation or statute that was a major barrier to NDI acquisition, it also noted DOD's support for the intent of draft legislation expected to be proposed to authorize establishment of a separate

set of streamlined, commercial-style procedures for the competitive procurement of commercial products. The eight DOD actions and four of the five impediments are discussed in appendix II. Regarding the fifth impediment, DOD's report discussed Cost Accounting Standards¹ requirements as an impediment identified by industry and the reasons why DOD did not believe this was a major problem.

Industry groups representing commercial and other potential NDI vendors commented formally or to us on DOD's report. These industry groups, as well as the offices of the congressional recipients of DOD's report, generally told us they believed that DOD's report (1) inadequately responded to the act's requirements and (2) raised questions about the level of DOD's commitment to emphasizing NDI procurement and identifying impediments to its use. Among their criticisms of the report, they stated that the impediments DOD identified were discussed only in a general way, DOD excluded some of the most important existing impediments, and the actions DOD described as having been taken to promote NDI procurement were modest in scope and represented little actual effort.

Historical Perspective

The idea that the federal government could benefit by purchasing commercial products has been advanced for a number of years. In 1972, the Commission on Government Procurement recommended that the government buy more commercial products, rather than rely on products designed to meet unique government specifications or purchase descriptions. In 1976, DOD implemented an effort, the Acquisition and Distribution of Commercial Products Program, which was designed to unite all previous DOD commercial buying efforts under one program. This program's objectives included (1) emphasizing the acquisition of commercial products to meet DOD requirements, (2) eliminating unnecessary government specifications, (3) tailoring essential specifications to reflect commercial practices, and (4) minimizing the administrative burden of government acquisition procedures.

Since then, legislation has encouraged buying commercial products and numerous studies and reports have emphasized the idea that the government could benefit from the use of commercial products and buying practices. For example, the Competition in Contracting Act of 1984 provided that DOD should (1) promote the use of commercial products and

¹Cost Accounting Standards are designed to achieve uniformity and consistency in the cost accounting practices followed by defense contractors.

(2) describe its requirements in terms of functions to be performed or performance required whenever practicable. In its June 1986 final report, the President's Blue Ribbon Commission on Defense Management (the Packard Commission) recommended increased use of commercial products and buying practices. In the Defense Acquisition Improvement Act of 1986, the Congress expanded and strengthened the emphasis on procuring commercial products to cover all NDI, including commercial products as well as previously developed items, such as weapon systems or components, that may require minor modification to meet an agency's needs.

Before enactment of the NDI statute, DOD had efforts underway to encourage the use of commercial products and other existing items. Army officials also stated that, in the early 1980s, the Army first used the term "NDI" and required that NDI acquisition be considered whenever acquisition strategies are being developed. Contracting officials at each of the procuring activities we visited said they emphasized the procurement of commercial products and other previously developed items before the NDI statute was enacted.

OSD officials said they were unable to estimate the amount or percentage of DOD procurement dollars spent on commercial products or other NDI. They stated that the only such estimate available was an estimate in a June 1985 DOD report.² This report stated that in fiscal year 1983, DOD awarded 5.5 million contract actions totaling \$37.8 billion for goods and services "readily available in the commercial marketplace." Although this represents a significant amount of commercial and previously developed products, DOD has recognized that more opportunities exist to emphasize the procurement of NDI.

Benefits of NDI

According to the Congress, DOD, vendors, and various industry associations, the potential benefits of appropriately procuring NDI, instead of non-NDI, include

- reduction or avoidance of research and development costs;
- decrease in procurement lead time, resulting in more rapid delivery and fielding;
- use of state-of-the-art technology available in the commercial marketplace;

²This report, Defense Financial and Investment Review, examined DOD's contract pricing, financing, and profit policies.

- increase in competition; and
- simplification of contracts, including increased use of fixed-price type contracts.

Potential Risks of NDI

Decisions to acquire NDI should be made carefully, with appropriate consideration given to potential risks as well as benefits. One potential risk is logistical support problems related to the use of NDI. For example, Navy officials told us that significant maintenance and training problems were already occurring because of a proliferation of various commercial products and other NDI. Another potential risk is the possibility that some commercial products and other NDI may not meet all the essential performance requirements. During the process of deciding to use NDI, some "tailoring" of the requirements to fit existing technology may occur. However, care must be exercised to ensure that NDI selected permit the essential requirements of the related military equipment or weapon systems' missions to be met. A third potential risk is that planned "minor" modifications of commercial or other previously developed items may become major and undermine achieving the intended benefits of NDI.

OFPP Activities

OFPP, Office of Management and Budget, has prepared a draft legislative proposal, intended to authorize establishment of a separate set of streamlined, commercial-style, competitive procedures for the acquisition of commercial products. OFPP officials said they expect the proposal to be presented as a new administration initiative in March 1989.

The proposal would provide increased authority to and allow greater use of judgment by contracting officers when purchasing commercial products. For example, the proposal would permit contracting officers to (1) require prospective offerers to demonstrate that products being offered have achieved a specified level of market acceptance before those products will be considered acceptable, (2) determine the appropriate lengths of time for responding to presolicitation notices and solicitations, (3) proceed concurrently with market research, specification development, and product evaluation, and (4) establish periodically revised source lists for repetitive purchases. The proposal is also intended to encourage the purchase of products representing the best value to the government, even though they may not be offered at the lowest initial price. In addition, laws prescribing required contract terms, performance requirements, and preferences for awarding contracts, such as preferences for small businesses, would not apply. In

Appendix I
Introduction

OFPP officials' view, small business preferences would not be necessary because the streamlined procedures will be beneficial to small businesses.

The Office of Federal Procurement Policy Act Amendments of 1988, section 9 of Public Law 100-679, enacted in November 1988, established the position of Advocate for the Acquisition of Commercial Products. The advocate will report directly and is responsible for providing recommendations to the Administrator of OFPP on matters such as (1) procurement regulations that should be rescinded or modified to encourage commercial products acquisition and (2) methods of simplifying procurement regulations that govern commercial products acquisition.

Evaluation of Claimed Impediments to DOD's Procurement of NDI

We assessed nine major claimed impediments to DOD's procurement of NDI. Industry officials who identified the claimed impediments were generally unable to provide data or other evidence indicating the extent or significance of the impediments. According to these officials (1) vendors have concentrated on addressing situations in which claimed impediments occurred through negotiations with government contracting officials, rather than collecting evidence, (2) data collection efforts would be expensive, time consuming, and difficult, and (3) certain DOD actions have lessened or at least changed some of industry's concerns.

Industry officials provided few examples of the claimed impediments. They explained that additional examples relating to the nine claimed impediments were unavailable because vendors (1) were concerned that providing such information would jeopardize their chances for future contract awards, (2) had already solved most available examples of the claimed impediments through negotiations, or (3) wanted to ensure that government contracting officials who they believed had exercised good judgment in negotiating solutions to the problems would not be negatively affected.

Following are our assessments of the nine impediments.

Management Emphasis

Management emphasis relates to the promotion of policies and efforts to ensure the accomplishments intended. Private industry officials maintain that DOD has not placed the appropriate management emphasis on procurement of commercial products and other NDI.

OSD and military service officials we interviewed generally stated that they were supportive of the statutory preference for NDI and have emphasized the procurement of commercial products and other NDI before and since enactment of the NDI statutory requirements. However, one OSD official who has major responsibility for implementing the NDI initiative stated that OSD has not fully supported the NDI initiative and that management emphasis on NDI needs to be increased. Other OSD officials stated that DOD has placed the appropriate management emphasis on NDI.

DOD has taken a number of actions to emphasize the procurement of NDI since enactment of the NDI statute. Some of these were discussed in DOD's report on NDI and others were taken after the report had been prepared.

DOD drafted a legislative proposal to increase its procurement of commercial products. However, when Office of Management and Budget officials decided that a governmentwide proposal would be pursued instead, DOD assisted in developing OFPP's legislative proposal to establish streamlined, commercial-style procedures for the acquisition of commercial products. DOD supports enactment of this proposal. (See p. 11.) The general approach contained in OFPP's draft proposal — establishing a separate set of procedures for procuring commercial items — appears to be responsive to a specific concern expressed by industry officials. These officials said such an approach is needed because federal procurement personnel's ingrained habits and attitudes preclude effectively modifying existing federal procurement procedures to significantly increase commercial product procurement.

DOD revised its acquisition regulations to reflect the statutory preference for NDI. DOD Federal Acquisition Regulation Supplement (DFARS) part 10, which relates to specifications and standards, was revised on March 15, 1987, to provide the statutory definition of NDI and a brief policy statement paraphrasing the statute's objective of fulfilling requirements for supply items through the procurement of NDI to the maximum practicable extent. DFARS part 7 was also revised to require that written acquisition plans for systems entering development include a description of the market research efforts planned or undertaken to identify NDI.

DOD Directive 5000.1, Major and Non-Major Defense Acquisition Programs, and DOD Instruction 5000.2, Defense Acquisition Program Procedures,¹ were revised in September 1987 to (1) state that NDI alternatives are to be considered before starting new development programs and (2) require selected justification documents, such as the System Concept Papers and Decision Coordinating Papers, to discuss why NDI systems were not selected.

In its December 1986 report on NDI, DOD stated that it had established a full-time OSD position, the Assistant for Commercial Acquisition, to (1) encourage use of NDI and (2) advocate policy and procedural changes to increase NDI acquisition. However, the official assigned to this position told us that he has other duties and responsibilities which have constrained his ability to perform his NDI-related duties. At the time of our review, he said that about 25 percent of his duties and time

¹ These two documents establish DOD acquisition policy and procedures. According to an OSD acquisition official, the directive is intended primarily to provide acquisition policy and the instruction is intended primarily to provide procedural guidance to implement this policy.

related to encouraging NDI procurement. He also stated that in August 1987 one individual was assigned to assist him in carrying out his duties, but this individual was reassigned in March 1988 to another position and not replaced.

The DOD directive on commercial acquisition (DOD Directive 5000.37, Acquisition and Distribution of Commercial Products) is being revised to promote NDI acquisition. Also, the proposed revision to DOD Directive 5000.37 is expected to authorize publication of an NDI manual providing detailed guidance for NDI acquisition. According to OSD's Assistant for Commercial Acquisition, these documents have been reviewed by OSD and military service officials since March 1987 and still require additional coordination within OSD, but have been delayed for several months because he has not been able to devote the amount of time originally intended to NDI-related efforts. He stated that the revised directive should be available in final form by late March 1989, but he was uncertain about issuance of the NDI manual.

The draft directive and NDI manual as well as a draft pamphlet on market analysis are informative and should be useful to DOD personnel. For example, the draft directive includes guidance to OSD and military personnel that they should (1) fulfill DOD's needs with NDI to the greatest extent practical, (2) state these needs in terms of functions, performance, or essential characteristics to permit NDI procurement, (3) conduct market research and analysis to determine NDI availability prior to any development effort, and (4) provide incentives to contractors to use NDI in systems, subsystems, or other equipment. The draft NDI manual provides acquisition personnel with more detailed guidance on what constitutes NDI, methods of using NDI within the systems acquisition process, and factors to consider when developing NDI acquisition strategies.

Under contract to OSD, the Logistics Management Institute published a report entitled Locating Off-the-Shelf Items, in June 1988. The report, which at the time of our review had not been widely distributed throughout DOD because it was still undergoing internal review by several OSD officials, discusses the advantages to DOD of using automated catalogs of commercial items and identifies available catalogs. The Institute's study on which this report was based also produced a pamphlet intended to be distributed to DOD personnel to assist them in performing market analysis of available products. At the time of our review, the pamphlet had not been distributed because it was being reviewed by OSD's Assistant for Commercial Acquisition. He estimated that the pamphlet would be distributed to DOD program managers, Defense Systems

Management College (DSMC)² graduates, specifications writers, and selected industry officials by late February 1989.

In April 1988, the Joint Logistics Commanders established an Ad Hoc Group on NDI to review DOD's regulations, policies, and procedures on NDI for the purpose of proposing changes to improve them, if necessary, and recommending ways to increase awareness of NDI in DOD's acquisition community. The group, which disbanded in December 1988, recommended that the Logistics Management Institute pamphlet be expanded to include information on DOD owned and operated data bases relating to NDI. The group also recommended that selected DOD activities, which have responsibilities for standardization of products and technical areas, be designated as centers to promote NDI procurement. The group said that these activities could be the most efficient and effective medium for exchange of market research information. The Joint Logistics Commanders have agreed with these recommendations and intend to forward them to the Under Secretary of Defense for Acquisition for consideration.

DOD's report also noted that an OSD-chaired steering group with high-level members from the military services and the Defense Logistics Agency was established in May 1987 to address ways to implement the recommendations of the President's Blue Ribbon Commission on Defense Management and the 1986 Defense Science Board Summer Study on the Use of Commercial Components in Military Equipment. This steering group took no substantive actions related to NDI and has been disbanded, according to the OSD Assistant for Commercial Acquisition.

In addition, DOD has developed Defense Acquisition Regulatory Council (DARC)³ cases to address the need for regulatory changes. In response to our request, DARC officials compiled a list of actions DARC has taken or is taking to increase NDI procurement since enactment of the NDI statute. These actions include revisions and proposed revisions to the Federal Acquisition Regulation (FAR) and DFARS, and are discussed in detail below and on pages 14, 26, 32, 38, and 41 of this appendix.

One ongoing case on which DARC plans to request industry comments would modify DFARS part 210 and require contracting officers to insert a provision on NDI in most solicitations. The provision advises offerers

²DSMC is the principal training center for DOD program managers.

³DARC is responsible for developing, reviewing, and processing revisions to Federal Acquisition Regulation and DFARS.

that they are encouraged to propose NDI alternatives to conventional research and development or military specification requirements.

We attempted to determine if DOD collects information on its procurement of commercial products or other NDI. DOD does not have data to show how much or what kind of NDI it procures or whether such procurements have increased.

In response to our request for DOD data on NDI procurement, OSD stated in an August 12, 1988, letter, that because of the cost and questionable usefulness associated with data gathering, little had been done to document how much NDI is being acquired. The military services' responses to our request also stated that contract data on NDI were unavailable. However, the Army stated that (1) as of the fourth quarter of fiscal year 1987 about 35 percent of its programs were "NDI in nature" and (2) since the first quarter of fiscal year 1987, this represented an increase from 178 to 194 programs (9 percent). Moreover, both the Army and Air Force stated that NDI data collection could be accomplished, possibly at a program rather than contract level. The Navy stated that it was open to suggestions on NDI data collection, but was concerned that collecting such data would be labor intensive.

We believe information on NDI would be useful in (1) identifying the amount and types of commercial products DOD already purchases, (2) identifying the types of products for which additional NDI opportunities may exist, and (3) assessing the effectiveness of actions taken to ensure that DOD procures NDI to the maximum practicable extent. As an illustration, DOD's collection of data on competitive contracting appears to have been useful in tracking results and encouraging increased competition.

The Director, Office of Management and Budget, stated in an April 1988 letter to the Secretary of Defense that DOD "will establish a formal information system to gather and maintain data on the [DOD's] use of commercial products." OSD officials told us that no actions had been taken to develop an information system, and they had not decided what actions DOD will take in response to this matter. Although DOD has taken actions to emphasize the procurement of NDI, it needs to do more to ensure that its requirements for supplies are defined and fulfilled through NDI to the maximum practicable extent. Actions are needed regarding issuing internal guidance on NDI and collecting some type of data on NDI procurement.

Notification and Training of DOD Acquisition Personnel on NDI

The NDI statute directed us to describe the programs conducted to notify DOD acquisition personnel of the NDI statutory requirements and train such personnel in appropriate procedures to be used relating to NDI. Industry officials stated that DOD needs a comprehensive training program on the procurement of commercial products.

Programs to Notify DOD Acquisition Personnel About NDI Policy and Procedures

DOD officials have taken some actions to notify personnel about the statutory requirement and DOD policies and procedures for procuring NDI. Besides revising DOD Directive 5000.1 and DOD Instruction 5000.2 in September 1987 to require consideration of NDI alternatives, DOD officials are preparing a manual for DOD-wide distribution. (See p. 15.) In addition, the Army and Navy had developed guidance on NDI acquisition.

At the time of our review, the Navy had a guide available which discussed current NDI acquisition policy. A Navy acquisition official told us that 750 copies of its NDI acquisition guide had been printed, 250 of these copies had been distributed, and as a result, most Navy acquisition personnel now have access to a copy of this guide. He stated that the remaining 500 copies are available through the Navy's publication office in Philadelphia.

The Army also issued NDI guidance in March 1987 in a pamphlet, Army Materiel Command and Army Training and Doctrine Command Pamphlet No. 70-2. However, Army Materiel Command officials stated that (1) this pamphlet was no longer in print because of revisions mandated by changes to DOD Directive 5000.1 and DOD Instruction 5000.2 and (2) the Army did not plan to provide additional NDI guidance beyond the course training materials it uses. (See p. 19 and table II.1 for more information on Army NDI training.) The Air Force issued draft guidance in June 1988 for implementation and comment on commercial product acquisition. The Air Force intends to issue this guidance as a pamphlet or handbook after receiving and considering comments.

Training

In addition to the provisions on acquisition training in the NDI statute, the House Committee on Armed Services' report on the fiscal year 1987 Defense Authorization Act recommended that DOD develop an "intensive training program to educate procurement personnel" to implement the NDI initiative. Individual members of the Congress and industry officials have also asserted that DOD needs training covering techniques and procedures for the procurement of commercial products. Industry officials

said that this training (1) is needed because OSD and military service guidance on commercial product acquisition differs and (2) is necessary to ensure proper implementation of a commercial product acquisition program.

DOD's December 1987 report on NDI stated that DSMC, the principal training center for DOD program managers, offers NDI acquisition training. According to the report, the training is in the form of course segments which discuss benefits, techniques, risks, and special considerations relating to NDI use. We found that three DSMC training courses provided NDI instruction. This training was primarily for program management officials and was generally not available to contracting officials. See table II.1 for information provided by the instructors on DSMC and other DOD training courses relating to NDI acquisition, including course content devoted to NDI acquisition and the number of personnel who have attended these courses.

Besides the DSMC training, we also identified other DOD training on NDI acquisition. The instructor of the Materiel Acquisition Management Course at the Army Logistics Management College, Fort Lee, Virginia, told us that this course provides NDI instruction primarily for young military officers involved in the project management of major weapon systems. The Army Materiel Command's Acquisition Policy Division and the Navy's Specification Control Advocate General separately contracted with a vendor to develop and provide NDI instructional information as part of acquisition streamlining courses for Army and Navy personnel. The NDI instructional material in these classes focuses on NDI as one possible consideration for a system's acquisition strategy. Only the Navy's 2-day streamlining course materials emphasize that NDI is the preferred acquisition strategy, although each course instructor we talked to stated that upon completion of these courses, their students understood that DOD's NDI policy was based on statutory requirements.

**Appendix II
Evaluation of Claimed Impediments to DOD's
Procurement of NDI**

Table II.1 Information Provided by DOD Instructors on NDI Training

Location/course title	Course length	Course objective^a	Lecture time devoted to NDI	NDI course materials	Students in past year (estimated)	Students served
DSMC:						
Program Management Course	20 weeks	Major systems acquisition management	20 minutes	- viewgraph on the definition of NDI - portion of a case study ^b	540	Program managers
Fundamentals of System Acquisition Management	1 week	Program management; life cycle of a weapon; current issues in acquisition	None (NDI mentioned throughout the course)	Viewgraphs on: - definition of NDI - policy (Congressional, DOD, services) - example list - 3 advantages - 13 challenges	385	Personnel with limited, dated, or no experience in acquisition
Executive Refresher Course in Acquisition Management	2 weeks	Perspectives of key decision makers in legislative and executive branches, and in defense industry	20 minutes	Viewgraph on the definition of NDI	140	Previous graduates of the Program Management Course
Army Logistics Management College:						
Materiel Acquisition Management	9 weeks	Introduction to project management of major weapon systems from a research and development perspective	2 hours	- Handout (17 pages) - 2 test questions	220	Early career staff
Specification Control Advocate General of the Navy:						
Acquisition Streamlining Course	2 days	Retrain acquisition personnel to write operational requirements	3 hours	- 27 viewgraphs - Course handbook - On-the-job manual	1,300	Middle management, program managers, contracting specialists, technical personnel
Executive Overview	2 hours	Overview of streamlining initiative	40 minutes	- 14 viewgraphs - Handout of same	200	High ranking program managers

(continued)

Appendix II
Evaluation of Claimed Impediments to DOD's
Procurement of NDI

Location/course title	Course length	Course objective ^a	Lecture time devoted to NDI	NDI course materials	Students in past year (estimated)	Students served
Army Materiel Command:						
Acquisition Streamlining Course	3 1/2 days	Acquisition streamlining policy	2 hours	- 18 viewgraphs - Text in course notebook	210	First year acquisition managers
Executive Overview	2 hours	Overview of streamlining policy	10 minutes	- 4 viewgraphs - Handout of same	450	Executive level acquisition managers

^aThe primary objective of these courses is to instruct the students in the following topics.

^bIn addition, the DSMC instructor who taught this course through August 1988 estimated that students spent about 20 hours of a 14-week case study exploring and deciding whether to develop a new engine for a weapon system or procure an existing engine.

In response to our inquiries concerning whether DOD personnel receive other formal training covering NDI acquisition, DOD officials told us that contracting specialists receive training in acquisition concepts that are generally applicable to commercial product as well as most other acquisition. These courses, which are conducted at the Air Force Institute of Technology and the Army Logistics Management College, provide instruction primarily on types of contracts, pricing, and small purchase procedures. Instructors of these courses stated, however, that they do not provide specific NDI acquisition training.

OSD procurement officials told us that the Defense Specifications Management Course at the Army Logistics Management College trains technical personnel, such as engineers, on how to write and use specifications for commercial products and NDI. The course instructor estimated that (1) 276 students received this training in the past year and (2) of the 2-week course, one hour of lecture time was devoted to NDI and commercial item descriptions. In addition, the Logistics Executive Development Course at the Army Logistics Management College provides senior-level logistics instruction, which includes some NDI-related concepts.

We did not identify any significant amount of NDI training provided to DOD personnel at non-DOD courses.

We found that DOD has provided formal NDI instruction to program managers, contracting officers, and technical requirements or engineering personnel. As table II.1 shows, however, the training was limited both in terms of the lecture time devoted to NDI and the number of personnel served (about 3,500 personnel). In comparison, an official at the Defense

Acquisition Education and Training Program estimated that there were 56,000 personnel (both civilian and military) in the DOD acquisition work force, aside from personnel classified as technical requirements or engineering personnel. He estimated that of the 56,000, between 30,000 to 31,000 were involved in professional contracting duties, and about 900 were program or deputy program managers of major and non-major weapon systems.

According to OSD's Deputy Assistant Secretary for Procurement (1) more training is needed for acquisition personnel who write requirements, specifications, and contracts and (2) more training and more updated information on how to prepare commercial item descriptions would decrease the problems DOD experiences with commercial product and NDI acquisition. In addition, acquisition officials at the activities we visited generally told us that they had not received any formal NDI training and that such training was probably a good idea. We believe DOD needs better assurance that its acquisition personnel receive sufficient instruction so that NDI is procured to the maximum practicable extent.

Cost or Pricing Data

Industry officials raised a number of concerns about cost or pricing data requirements relating to sales of commercial products to the government.

According to FAR 15.8, cost or pricing data are all the facts at the time of price agreement that prudent buyers and sellers would reasonably expect to significantly affect price negotiations. The submission of cost or pricing data by an offerer is intended to enable the government and offerer to negotiate fair and reasonable prices. Statutory requirements for contractors to submit cost or pricing data were introduced in the Truth-in-Negotiations Act, Public Law 87-653 in 1962.

FAR states that contracting officers must require contractors to submit certified cost or pricing data before

- awarding a negotiated prime contract over \$100,000;
- pricing a contract change or modification over \$100,000;
- awarding a subcontract in excess of \$100,000 at any tier, if the prime contractor and higher tier subcontractor have furnished certified data; or
- pricing a change or modification over \$100,000 to a subcontract.

Under these conditions, contractors are required to certify that the cost or pricing data submitted are accurate, complete, and current as of the date of final price agreement. However, according to FAR, contracting officers shall not require submission or certification of cost or pricing data when they determine that prices are

- based on adequate price competition;
- based on established catalog or market prices of commercial items sold in substantial quantities to the general public; or
- set by law or regulation.

The head of an agency may also, in exceptional cases, waive the requirement for submitting certified cost or pricing data. If it is later found that the certified cost or pricing data furnished by a contractor were not accurate, complete, and current, the government is entitled to a price adjustment, to the extent that the defective data caused the contract price to be overstated.

Numerous industry officials and representatives stated that the requirement to submit certified cost or pricing data is a major impediment to commercial product and other NDI acquisition. For example, some said that requiring cost or pricing data for commercial products is "one of the biggest impediments [to NDI acquisition] and one that many commercial vendors will avoid, even at the expense of losing government business."

Industry officials stated that cost or pricing data are being required too often or for unnecessary reasons. More specifically, they said that (1) contracting officers frequently have required submission of certified cost or pricing data when adequate price competition existed and (2) the regulatory exemption to certified cost or pricing data is too narrowly defined for products that have prices based on established catalog or established market prices.

Industry officials also said that contracting officials overzealously require submission of certified cost or pricing data because they (1) do not exercise sound business judgment to determine fair and reasonable prices, (2) use the data as "insurance" to protect themselves from potential criticism from auditors, the press, or the Congress for paying too much for items, (3) act as if requiring the data does not cost the government anything, or (4) focus on the amount of profit a contractor will realize instead of ensuring that the price is fair and reasonable.

According to industry officials, this impediment causes unnecessary cost and administrative burden for the government and industry, potential liabilities for industry because of the possibility of incorrectly certifying data, and lost business for many commercial businesses. Industry officials said that many vendors are unable to collect and maintain the data necessary to submit or certify cost or pricing data. They added that some companies have lost government business simply because they refused to provide cost or pricing data for commercial items and other NDI.

Industry officials were unable to provide evidence documenting the extent of this claimed problem. They stated that companies have not maintained information on the adverse effects of government requirements for cost or pricing data, primarily because doing so is burdensome and expensive. They also said that such information is unavailable because many companies are reluctant to criticize contracting practices for fear of losing government business.

DOD's December 1987 report on NDI identified the Truth-in-Negotiations Act as an impediment to NDI acquisition in some cases. OSD procurement officials told us that the acquisition regulations comply fully with the Truth-in-Negotiations Act but the act needs to be examined to determine whether it needs to be revised to adequately address some of industry's concerns about cost or pricing data requirements. DOD's report said that DOD alleviated some of the problems by taking two actions:

- Issuing a policy memorandum in May 1987, which included guidance to contracting officers describing the circumstances constituting adequate price competition, to emphasize that cost or pricing data are not required when adequate price competition is anticipated.
- Raising the dollar threshold for requiring audit reports from \$100,000 to \$500,000 on fixed-price contracts and from \$500,000 to \$1 million on cost-type contracts.

DOD officials explained that raising the dollar threshold does not change the requirement for submission and certification of cost or pricing data, but reduces the amount of audit work required, thus alleviating some of the burden for contractors.

Adequate Price Competition

Industry officials stated that contracting officials frequently have required cost or pricing data when adequate price competition existed.

FAR 15.804-3(b), entitled adequate price competition, states that price competition exists if (1) offers are solicited, (2) two or more responsible offerers that can satisfy the government's requirements submit priced offers responsive to the solicitation's expressed requirements, and (3) these offerers compete independently for a contract to be awarded to the responsible offerer submitting the lowest evaluated price. FAR further states that if price competition exists, the contracting officer shall presume that it is adequate unless (1) the solicitation is made under conditions that unreasonably deny to one or more known and qualified offerers an opportunity to compete, (2) the low offerer has such a decided advantage that it is practically immune from competition, or (3) there is a finding, supported by a statement of the facts and approved at a level above the contracting officer, that the lowest price is unreasonable. Competitive awards not based on price competition are referred to as design or technical competition. According to DFARS, such awards are "based primarily" on design or technical factors, rather than price.

Based on DOD's DD-350 prime contract award reporting system, certificates of cost or pricing data were obtained for 4,326 new contract actions¹ that obligated over \$25,000 during the first half of fiscal year 1988. Seven hundred and forty-nine (17.3 percent) of these contract actions were reported as awarded based on price competition. These 749 contract actions obligated about \$763 million, 10.6 percent of the \$7.2 billion obligated by the 4,326 contract actions. Fifty-four of the 749 contract actions were awarded at the procuring activities we visited, including 46 at the Army's Tank Automotive Command. For the remaining actions, three were at the Army's Communications-Electronics Command, two were at the Air Force's Aeronautical Systems Division, and three were at the Naval Air Systems Command.

We judgmentally selected and reviewed 29 of the 46 contract awards at the Army's Tank Automotive Command. We found that provisions which would require certified cost or pricing data had been included in

¹New contract actions do not include contract modifications or orders under existing contracts, but include only (1) new definitive contracts, (2) initial letter contracts, and (3) orders under basic ordering agreements. (See DFARS 204.671-5(b)(13).) For contract actions of more than \$25,000 during the first half of fiscal year 1988, the DD-350 system reported 29,196 new contract actions, obligating \$17.4 billion; contract modifications or orders under existing contracts accounted for most of the remaining \$62 billion reported as obligated during that period.

the solicitations for all 29 contract awards, but after receipt of contractors' proposals the data had actually been required and obtained for only seven of the awards. For these seven awards, we found that the competition anticipated by contracting officials at the time of solicitation issuance had not materialized and, therefore, they believed certified cost or pricing data were appropriately obtained for those situations. Regarding situations like the 22 contract awards for which certified cost or pricing data were required but not obtained, an industry official said that DOD's solicitations should say that the data will be required only if necessary to minimize administrative burden. Aside from the questions raised by this industry position, which we did not have time to examine, we did not find that the procuring activity had inappropriately required submission of certified cost or pricing data.

When we discussed these findings with OSD, industry, and OFPP officials at the conclusion of our review, they said that DOD personnel may be inappropriately requiring contractors to submit certified cost or pricing data in some cases on awards categorized as design or technical competition; that is, cases for which adequate price competition exists. This indicates that the difference of opinion between industry and DOD contracting officials may be at least partly attributable to disagreement over the proper definition of adequate price competition and its relationship to design or technical competition.

Based on DOD's DD-350 system, 506 new contract actions, obligating about \$1.5 billion, were awarded during the first half of fiscal year 1988 based on (1) design or technical competition and (2) submission of certificate of cost or pricing data. This represents 11.7 percent of the 4,326 new contract actions reported as based on submission of a certificate of cost or pricing data and 20.8 percent of their dollar value.

DOD's May 1987 policy memorandum on adequate price competition stated that:

- OSD had become aware that some contracting officials were requiring submission of cost or pricing data when there was a reasonable expectation that adequate price competition would result on a particular procurement.
- Unnecessary requirements for submission of cost or pricing data increase proposal preparation costs, extend procurement leadtimes, and waste contractor and government resources.

- There should rarely be a need for certified cost or pricing data when a contract is to be awarded competitively based on the lowest evaluated price (considering all evaluation factors).

Contracting officials we met with at the locations visited stated that they were aware of and had implemented the OSD policy guidance. However, industry officials expressed disappointment that this guidance was provided in the form of a policy memorandum, rather than a regulatory change. DARC staff told us that a DARC case was initiated in August 1987 to consider implementing this policy coverage in DFARS and was expected to be completed by mid-February 1989.

Established Catalog or Market Prices

Industry officials stated that the exemption for established catalog or established market prices of commercial items sold in substantial quantities to the general public is too restrictive. They have proposed several regulatory changes to address their concerns. However, industry officials were generally unable to provide evidence concerning the extent of the claimed problems.

One specific industry concern relates to the term substantial quantities.

FAR 15.804-3(f)(2) provides for specific percentage calculations to be made for determining whether a commercial item has been sold in substantial quantities to the general public and, therefore, should be exempted from cost or pricing requirements. For example, the regulations stipulate that the substantial quantities test is rarely met if less than 35 percent of the sales of a commercial item is to the general public (that is, more than 65 percent is to the U.S. government or to contractors for U.S. government use). Industry officials stated that (1) one or more large competitive purchases of a commercial item by the government can skew this formula so that cost or pricing data are required, even if the item was previously exempted based on the formula, and (2) FAR should be revised to exclude competitive purchases by the government from the formula for sales at established catalog prices.

Industry officials provided one example to illustrate this claimed impediment.

- The Navy Ships Parts Control Center awarded a firm fixed-price contract for electronics test equipment in July 1988. The award originally obligated \$2.2 million and the total contract value is estimated to be

between \$6 million and \$9 million, depending on the quantities purchased. The contractor requested exemption from submitting certified cost or pricing data, but the request was disapproved because the substantial quantities test was not met. The contractor had previously been exempted from cost or pricing data requirements based on established catalog or market prices, but a recent price competitive purchase made by the Naval Electronics Systems Engineering Center of 152 pieces of the same test equipment significantly changed the substantiality calculations. Before this purchase, the government had procured twelve pieces of the test equipment. Although the contractor was ultimately exempted from cost or pricing data requirements, the government's contract negotiator agreed that an undue burden had been placed on the contractor.

DOD officials could not explain the logic of requiring certified cost or pricing data under such circumstances. They also noted that (1) FAR 15.804-3(g) authorizes the chief of the contracting office to exempt "exceptional cases" relating to catalog or market prices, (2) this authority was intended for situations such as industry's example, and (3) it would be useful to consider revising FAR 15.804-3(g) to specifically cite as an example cases for which previous awards based on adequate price competition would deprive contractors from receiving the exemptions.

Although the contractor ultimately received the exemption in the only example of this problem that industry brought to our attention, undue administrative burden appeared to have been placed on the contractor. This example illustrates the potential for creating undue administrative burden in such cases. We believe, and DOD officials agreed, that DOD needs to examine if acquisition regulations should be changed to ensure that contractors not face possible loss of exemptions to certified cost or pricing data requirements only because the amount of previous sales of the same type of items to the government based on adequate price competition exceed established regulatory thresholds.

Industry officials expressed other concerns about the catalog or market price exemption. For example, these concerns relate to the requirement to identify items sold to the general public and use of the substantial quantities test for (1) newly introduced and discontinued commercial products and (2) certain spare and replacement parts. DOD officials stated that they have invited industry officials to present their proposed regulatory changes to cost or pricing data requirements, and will address these proposals.

Claimed Problems Related to FAR Part 11

FAR part 11 prescribes policies and procedures for acquisition of commercial products and the use of commercial distribution systems. Industry officials stated that FAR provides inadequate regulatory coverage on market research and analysis, commercial product acceptability, and best value buying.

FAR part 10 defines market research as the process used for collecting and analyzing available information about the entire market available to satisfy the minimum agency needs and arrive at the most suitable approach to acquiring, distributing and supporting supplies and services. FAR 11.004 states that agencies shall conduct market research and analysis as needed to ensure that (1) full and open competition is obtained and (2) the government's needs are met in a cost effective manner. FAR 11.004 also provides guidance for developing the information necessary to perform market research and suggests sources for this information.

FAR 11.005(a) states that the acceptability of a commercial product to meet government needs depends on reliability, performance, logistic support requirements, and cost, among other things. FAR 11.006 states that an evaluation of a commercial product may require information to establish the reliability of the product. In addition, FAR 10.009 directs agencies to encourage users to communicate with acquisition organizations concerning the product's capability, deficiencies, and suggestions for corrective actions. Based on our review of these FAR provisions, we have no reason to question the sufficiency of existing regulatory coverage on market research and analysis and acceptability in the context of existing procurement procedures. (See p. 11 regarding OFPP's draft proposal to establish a separate system of procedures for procuring commercial products.) However, as previously stated, issuance of DOD's NDI manual and a pamphlet to assist DOD personnel in performing market analysis on available products, which provide detailed guidance on this subject, has been delayed. We believe such documents are probably more appropriate than the regulations for providing detailed guidance to DOD contracting officials on these matters.

Best value purchasing refers to selecting those offerers' proposals that are most advantageous to the government, considering price and non-price factors, such as quality. Industry officials stated that too often the government purchases items solely based on price, which inhibits buying products representing the best value to the government. FAR 15.605 states that price or cost to the government "shall be included as an evaluation factor" and quality "also shall be addressed" in every source

selection. This provision explains that when quality is included in the evaluation factors, it may be expressed in terms of technical excellence, management capability, personnel qualifications, prior experience, past performance, and schedule compliance.

10 U.S.C. 2305 and 41 U.S.C. 253b, covering Defense and most federal civil agencies, respectively, as amended by the Competition in Contracting Act of 1984, permit contract awards based on competitive proposals to be made without discussions with offerers only when the existence of full and open competition or accurate prior cost experience demonstrate that award without discussions would result in the lowest overall cost to the government.

We have concluded that this provision requires agency officials to hold discussions with offerers on procurements based on competitive proposals, unless agency officials award contracts to offerers proposing the lowest price.⁵

OSD and OFPP officials stated that rather than hold discussions that can be costly in terms of time and resources, contracting officials sometimes select the lowest-priced offer that is not the best value to the government. They also said that most government procurements already take a lengthy time to complete. OFPP's draft legislative proposal would authorize competitive contract awards for commercial products without discussions whenever the contracting officer determines that the offer selected is the best value to the agency. In addition, the Secretary of Defense provided a report to the House and Senate Armed Services Committees on August 12, 1988, which said that DOD is considering proposing a statutory change that would allow contract awards for all products and services without discussions to other than the lowest offerer in the competitive range.

The requirement to hold discussions unless agency officials award contracts to offerers proposing the lowest price has benefits. It (1) allows offerers to revise their proposals to meet the government's minimum needs and (2) helps ensure that the government satisfies its needs at the lowest overall cost. Neither industry nor government officials have provided evidence showing that the burden of such discussions outweighs the benefits.

⁵See, for example, Pan Am Support Services, Inc., Request for Reconsideration, 66 Comp. Gen. 457 (1987), 87-1 CPD Paragraph 512.

Government Rights to Technical Data

Industry officials expressed concerns about DOD's acquisition and release of technical data to contractors' competitors.

FAR and DFARS define technical data as recorded information of a scientific or technical nature. Rights to technical data include permission to use, duplicate, or disclose such information. This permission may be conveyed by the owner in whole, in part, or for government purposes only. Technical data are commonly used to describe a broad range of engineering and manufacturing information.

The government requires rights to use technical data so that it can (1) develop specifications for and improvements to its requirements for supplies and services, (2) maintain and operate equipment, (3) obtain and increase competition among its suppliers, and (4) disseminate information to foster subsequent technological developments. The level of technical data that is the most specific and is generally safeguarded by industry describes an item's production and performance in sufficient detail to allow a competent manufacturer to reproduce the item.

Industry often has an economic interest in technical data that the government wishes to acquire or use. Commercial organizations usually protect technical data because disclosure to other parties may jeopardize their competitive advantage and cause economic hardship.

For items that may have potential for profit in the commercial market, industry officials said that the government's practice of obtaining and disseminating technical data to stimulate competitive procurements is short sighted and threatens long-term government and industry interests. For example, prime contractors have cited difficulties in securing subcontractors and increased negotiating time and costs as results of the government's excessive requests for technical data rights.

One industry association official said that almost all commercial products and many other NDI purchased by DOD have already been developed exclusively at the seller's expense. This official and the individual vendors we spoke with said it is extremely inappropriate for DOD to both allow and encourage a competitor to produce a product and make a profit from someone else's original research and development efforts.

It is understandable that industry officials are extremely concerned about providing the government with rights to technical data for commercial products and other NDI that would enable another manufacturer to produce an identical item. Commercial vendors generally told us that

they are not in the business of providing a means to support their competition by disclosing proprietary information or surrendering rights to technical data.

Industry officials we interviewed, however, had not determined the extent to which government rights to technical data harm industry and the government. They explained that they had concentrated their efforts on negotiating with the government to delete its technical data requirements for individual procurements. No one we met with could provide any specific examples or document the extent of this claimed problem.

Some survey work has been done to address this issue. One group, the Proprietary Industries Association, conducted a survey of its member companies concerning this issue. The 35 member companies that responded unanimously said that current DOD policy on technical data discourages (1) vendors' development and use of new technology in products sold to the government and (2) industry participation in government procurement. Specifically, 12 of the companies said they (1) refused to bid on government contracts ranging from \$10,000 to \$15 million because of concern over data rights and (2) had disagreed with the government over rights in technical data requirements in at least 75 percent of the government procurements they had negotiated.

DOD's December 1987 report on NDI identifies government requirements for technical data rights as an impediment that can discourage commercial vendors from seeking DOD business. The report states that DOD's May 1987 revisions to DFARS addressed industry's concerns in this area. According to the report, these revisions directed contracting officers to (1) obtain only the minimum data and data rights essential to meet government needs and (2) not require contractors to sell or relinquish their proprietary rights to technical data.

The May 1987 technical data regulations referred to in DOD's report on NDI were superceded by regulations published in April 1988. The April 1988 regulations were subsequently reviewed and revised by DARC in response to concerns expressed by OFPP and industry. The primary concerns were that the April 1988 regulations did not ensure that

- the government requested only the minimum technical data rights required and

- a proper balance had been achieved between (1) the government's legitimate needs for rights to technical data and (2) industry's desire to protect the future economic value of proprietary information as well as the government's objective to stimulate the commercialization of technology for long-term benefits to the national economy.

New interim regulations, which took effect on October 31, 1988, include direction to DOD personnel intended to limit the acquisition of data and data rights for commercial items developed at private expense. OFPP and industry officials stated that these new regulations seem to achieve a better balance between industry's and government's concerns than previous regulations. Industry officials added, however, that uncertainties still exist about whether implementation of the regulations by DOD personnel will actually alleviate their concerns.

Use of Varying Contract Provisions

Industry officials stated that, because of a lack of consistency and uniformity in the contract provisions used by DOD contracting activities, inappropriate contract clauses and too many different contract provisions are being used for similar or identical commercial products. The officials said that (1) such contracting practices seriously impede commercial vendors from doing business with the government and (2) small vendors are particularly affected because they often lack the resources necessary to fully comprehend complicated government contractual requirements. The officials also said that in some cases these vendors will sign contracts without understanding the terms and conditions they have agreed to, which reflects the vendors' desire to sell to the government even at the risk of future liabilities.

One industry association identified several FAR contract clauses that it believes are inappropriately used for buying commercial products, primarily because they create administrative burden.⁶ For example, FAR 52.230-3, Cost Accounting Standards, requires disclosure of contractors' cost accounting practices. Industry officials cited the burden of providing this information to the government and stated that they should not have to provide such information for products readily available in the commercial marketplace.

⁶Other such clauses identified by this association were FAR 52.212-9, Variation in Quantity; FAR 52.214-27, Price Reduction for Defective Cost or Pricing Data; and FAR 52.214-28, Subcontractor Cost or Pricing Data.

In addition, contracting officials at the Air Force Systems Command identified several FAR clauses as being inappropriately used for commercial product acquisition.⁷ For example, FAR 52.215-1, 2, 22, 24 and 26, Examination of Records by Comptroller General, Audit-Negotiation, Price Reduction for Defective Cost or Pricing Data, Subcontractor Cost or Pricing Data, and Integrity of Unit Prices, provides (1) authority for audits and (2) authority for recovery of funds, subcontractor data requirements, and assurance that contractor cost distribution methods do not distort unit prices.

Industry officials acknowledged that they were unable to provide evidence establishing the extent or significance of the claimed impediments, nor many examples. They attributed the lack of evidence and the scarcity of examples to the resolution of most of the problems regarding inappropriate and varying contract clauses during negotiations with contracting officials before contract award. However, the officials said this occurred only after considerable administrative burden to industry and the government.

An industry official provided the following example in which different contract clauses were used by three DOD procuring activities for the purchase of an identical item.

- A vendor provided copies of contracts awarded for identical commercial oscilloscopes by the Sacramento Army Depot on August 14, 1987; Sacramento Air Logistics Center on December 7, 1987; and Navy Ships Parts Control Center on October 10, 1987.⁸ The contracts were different in terms of format and the clauses used, despite the fact that identical oscilloscopes were purchased by each activity. (Figure II.1 shows that most of the clauses included in any of the three contracts appeared in only one of the contracts.) The vendor said that the government's use of different contracts for identical items causes administrative burden, requiring (1) the vendor's personnel to closely review the contracts and

⁷Other such clauses identified by these officials were FAR 52.208-1, Required Sources for Jewel Bearings and Related Items; FAR 52.219-8, Utilization of Small Business Concerns and Small Disadvantaged Business Concerns; FAR 52.220-3 and 4, Utilization of Labor Surplus Area Concerns, and Labor Surplus Area Subcontracting Program; FAR 52.222-26, 35 and 36, Equal Opportunity, Affirmative Action for Special Disabled and Vietnam Era Veterans, and Affirmative Action for Handicapped Workers; and FAR 52.227-1 and 2, Authorization and Consent, Notification and Assistance, Regarding Patent and Copyright Infringement.

⁸The Army purchased six oscilloscopes, a color monitor, test generator, spectrum analyzer, and related manuals for about \$76,000. The Air Force purchased 27 oscilloscopes, a photometer, and interconnecting equipment for about \$141,000. The Navy purchased eight oscilloscopes for about \$28,000.

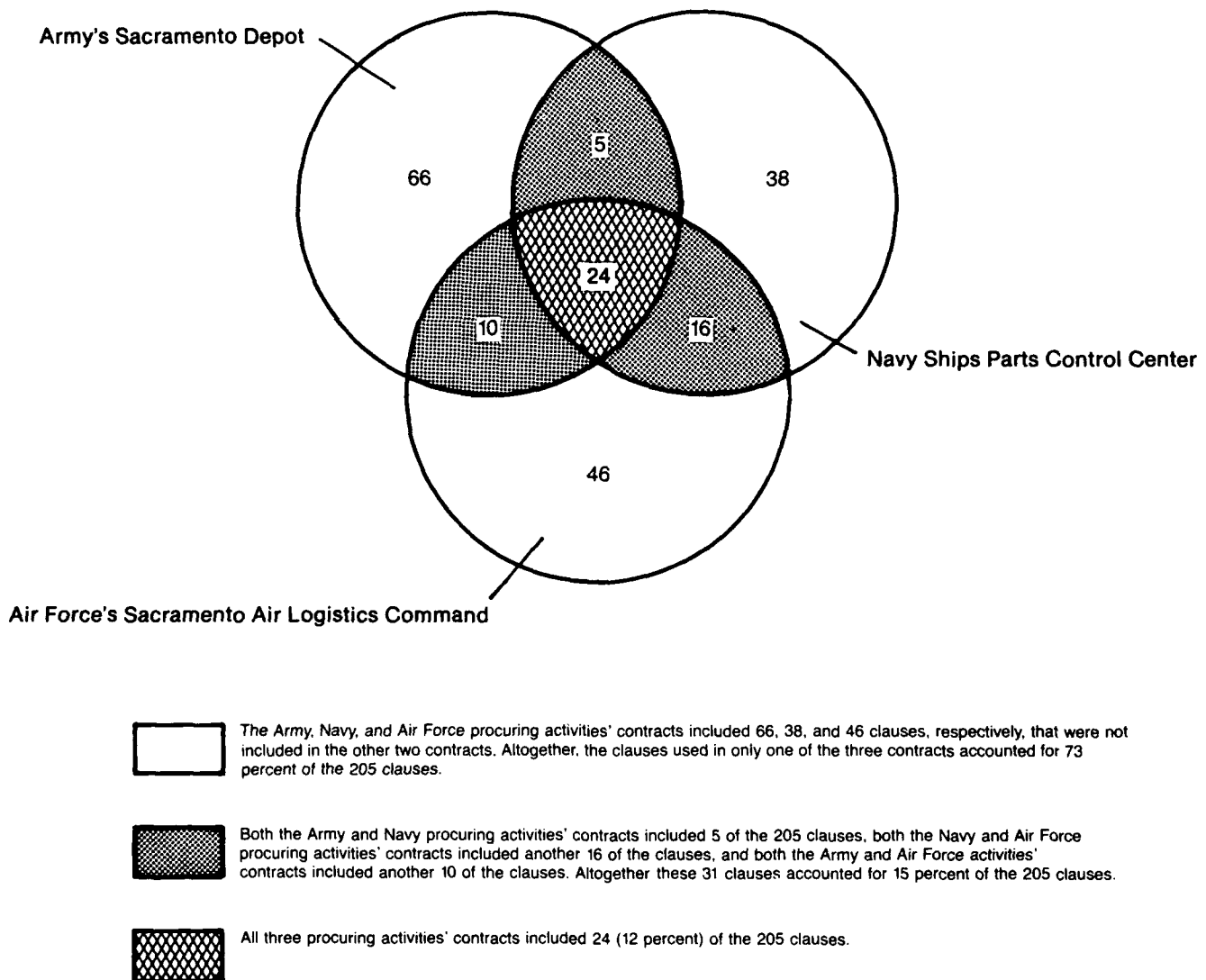
**Appendix II
Evaluation of Claimed Impediments to DOD's
Procurement of NDI**

resolve any objectionable clauses through negotiations and (2) the company to develop a comprehensive training program for its personnel to understand all the different contract clauses and formats the government uses.

DOD officials at these activities told us that (1) they believed they had written their contracts in accordance with FAR requirements and (2) although they were unaware of how other activities structured their contracts, they speculated that differences in these three contracts may be due to each military service's unique requirements. We believe these differences occurred because (1) no standard or model contract exists for contracting activities to use in purchasing commercial products and (2) these activities did not coordinate their actions with each other and no requirement exists for them to do so.

Appendix II
Evaluation of Claimed Impediments to DOD's
Procurement of NDI

Figure II.1: Information on the 205 Different Clauses Used in Three Contracts, Each Awarded by a Different Activity, to Procure Oscilloscopes.



In its December 1987 NDI report, DOD stated that contracts for NDI "include unnecessary clauses and there are too many and too complex regulations." The report also said that to remedy this impediment (1) "DOD has taken steps to modify the acquisition system to rely more on individual authority and accountability and use commercial-style procurement methods" and (2) these actions support the Presidential Task Force on Regulatory Relief. These actions are

- developing legislative reform proposals to streamline and improve the acquisition process;
- reviewing acquisition regulations and field procedures to identify rules that are not required by law or are unnecessarily restrictive;
- collecting ideas from field personnel, various acquisition studies, and industry;
- working to reduce the number, volume, and complexity of military service acquisition regulations; and
- testing innovative procurement methods through the Pilot Contracting Activities Program, an effort which is intended, among other things, to help streamline government purchases of commercial products by simplifying procurement procedures for possible DOD-wide application.

Since issuing its NDI report, DOD has continued its work in these areas to address the issues of unnecessary clauses and too many regulations. OSD officials told us that reducing the number and complexity of regulations will help solve the problem of unnecessary contract clauses because, with few exceptions, contract clauses are based on acquisition regulations. In addition, DOD responded to an industry association's concerns pertaining to 20 contract clauses, which relate to both NDI and non-NDI and were developed by various DOD contracting activities. DOD reviewed the 20 clauses and informed the industry association in a June 1988 letter that 12 of these have been or are being revised or deleted. DOD found that the remaining eight clauses were acceptable. With the exception of DOD's review of the 20 clauses, each of the actions mentioned in DOD's NDI report is still in process, so that resulting benefits have not yet been fully realized.

DOD established its Pilot Contracting Activities Program in March 1987. According to OSD procurement officials, this program is an attempt to increase individual authority by encouraging DOD contracting personnel to identify regulations, clauses, and procedures that may be inappropriate and by providing a means to obtain approval not to use them. The

program has authorized 45 DOD procuring activities to seek class deviations and waivers from the Director of Contracting of each DOD component, but it had not resulted in substantive changes at the time of our review. As of September 8, 1988, 459 requests for deviations or waivers had been received but, according to DOD officials, these requests have been relatively minor in scope. DOD has encouraged participating activities in this program to work with industry to identify the need for regulatory changes; however, according to OSD procurement officials, there has not been much response from industry.

Regarding industry's claim that DOD has been using too many different contract provisions for similar or identical commercial products, OSD procurement officials stated that they were unaware of the extent of this problem because industry officials had not provided them with evidence.

Contracting officials at the DOD locations we visited told us that (1) many contracts they have awarded contained requirements that made little or no sense for competitive sales of commercial products, (2) there was a lack of uniformity and consistency in many contracts for similar commercial items, and (3) inappropriate requirements have created administrative burdens for the government and industry.

One suggestion that has been made by a vendor to reduce the complexity and inconsistency in DOD's use of contract clauses is that (1) companies sign annual agreements to abide by certain government requirements and (2) the agreements contain general or "boilerplate" requirements necessary for a commercial vendor to do business with the government. An Air Force procurement official told us that annual agreements are already being used by the Air Force Logistics Command for commercial products. Another suggestion for simplifying government contracting is use of a uniform government contract for commercial products. At the time of our review, a leading computer manufacturer had undertaken an effort to explore the use of such a contract with the General Services Administration (GSA).

As previously mentioned, DOD supports OFPP's draft legislation intended to authorize establishment of a separate set of streamlined, commercial-style, competitive procedures for the acquisition of commercial products. OSD officials said that such legislation could remove many of the inconsistencies or complexities some vendors are experiencing when contracting with the government. OFPP's draft legislation would require the use of commercial contract terms and conditions to the maximum

extent consistent with the interest of the government. This draft legislation is also intended to exempt purchases of commercial products from any other statutory requirements that prescribe (1) terms and conditions to be included in contracts, (2) requirements to be imposed on a contractor that relate to its performance of the contract and are different from those required by fair labor, discrimination, environmental, trade, and other laws that generally regulate commercial business operations, and (3) preferences to be given to any source or class of sources, such as small business concerns.

At the time of our review, DARC and the Civilian Agency Acquisition Council were also considering revisions to FAR providing for the use of annual agreements and simplified contracts for acquisition of supplies and services proposed to be acquired under certain fixed-price type contracts. DARC officials were unable to estimate when this effort would be completed.

Use of Military Specifications

DOD personnel use military specifications to ensure that weapon systems or other items will satisfy DOD needs. For example, military specifications are intended to help ensure that some items have the potential to operate in hostile environments, or satisfy critical safety-related requirements. DOD personnel also use military standards to define practices or processes, such as testing. Military standards are often lengthy and may be "tailored" by personnel so that only the applicable portions of the standards are used.

According to FAR 10.002(b), descriptions of agency requirements must be stated in terms of functions to be performed or performance required, whenever practicable. Therefore, when practicable, DOD requirements should be defined more broadly than in the narrower terms that military specifications often use, so that the (1) maximum number of potential contractors may compete for contract awards and (2) contractors have appropriate freedom to offer the best possible solution to the government's requirement.

Industry representatives stated that (1) DOD officials inappropriately use military specifications in some cases, especially for products that do not need to operate in a hostile environment, (2) this problem is increased because regulatory guidance on the use of military specifications is insufficient to meet the statutory requirement for preference to

NDI, and (3) unnecessary use of military specifications and poor regulatory guidance create burdens on industry and increase costs to the government. Industry officials added that many military specifications are lengthy, reference numerous other military specifications, and have often been difficult to obtain from the government when vendors do not possess their own copies.

An industry official provided an example to illustrate some of these concerns.

- A contract was awarded in August 1986 by the Navy⁹ for commercially available measurement and test equipment for about \$1.85 million, according to this official. He stated that his company declined to compete for this contract award because the military specification referenced in the solicitation was improperly used and referred to numerous other specifications. According to this official, the entire military specification MIL-T-28800, which provides specifications for electronic test equipment, was applied to the Navy's requirement, when only selected sections should have been used. He said several sections were unduly restrictive for a commercial product. One section on workmanship instructed the company on how the product should be made. According to the official, (1) his company prefers to use its own workmanship standards and (2) adherence to the military specification would unnecessarily increase costs. This official also said that MIL-T-28800 is difficult to use because it makes numerous references to other sections of this and other military specifications. For example, he noted that one section of MIL-T-28800 on safety refers to other paragraphs in this military specification and to MIL-I-81219 for additional requirements. An industry association noted that MIL-T-28800 references 52 military specifications and military standards, 21 other standards, 1 handbook, and 2 federal publications.

According to an OSD official responsible for reviewing specifications and standards, only some of the documents referenced in MIL-T-28800 may apply to a particular contract. Other OSD officials responsible for procurement policy told us that (1) situations similar to this example have occurred in the past and have been a problem and (2) MIL-T-28800 should probably be a military standard, not a military specification and, therefore, should be subject to tailoring. They added that referencing

⁹The official who provided this example would not provide information on the Navy command because he was concerned that doing so would jeopardize future working relationships. He agreed to provide some information if we would not discuss this example with Navy officials who were involved in this contract award.

specifications greatly simplifies the government's task of maintaining current and accurate specifications by limiting the number of places where changes are needed. They also said that industry standards often similarly use numerous references.

Contracting officials we spoke with at the activities visited gave various views on this claimed impediment. Air Force Systems Command contracting and program officials stated that they often (1) have met resistance or been questioned by their supervisors or requirements personnel when they tried to avoid using military specifications and (2) have to justify in writing why a military specification was not used and that this delays procurements. However, they also said that they sometimes modify or delete portions of objectionable military specifications. Contracting officials at the Army's Tank Automotive Command and the Communications-Electronics Command told us that they generally use functional or performance specifications.

DOD and industry officials we met with generally agreed that DOD is actively taking steps to reduce unnecessary use of military specifications and that progress has been made in addressing this problem. Industry officials stated, however, that in addition to continuing its efforts in this area, DOD should revise acquisition regulations to ensure that military specifications are used only when absolutely necessary.

DOD has undertaken efforts to decrease the use of military specifications and increase the use of functional and performance specifications and other nongovernmental standards in its solicitations and contracts, when appropriate. (Nongovernmental standards are standards developed primarily by private sector associations or organizations such as technical societies.) The services are working to decrease the number of military specifications and military standards that are available for use by acquisition personnel and working with industry to increase the use of nongovernmental standards.

A DOD official responsible for developing policy on DOD's use of military specifications reported that DOD (1) has adopted over 4,300 nongovernmental standards for use by contracting and technical personnel and (2) intends to increase its use of nongovernmental standards in the future. This official told us that 27,044 military specifications and 7,077 military standards are currently in use. Regarding industry's assertions that military specifications have been difficult to obtain, an OSD official stated that efforts are underway to automate the access to military

specifications. He estimated that when these efforts are completed, vendors should be able to obtain copies in about one week.

DOD also recently revised and issued two forms of guidance to reduce the use of military specifications. DOD Directive 4120.20, Development and Use of Non-Government Standards, was revised in March 1988 to tell acquisition and technical personnel that they should use nongovernmental standards whenever practical. Military Standard 970, Standards and Specifications, Order of Preference for the Selection of, was revised in October 1987. This standard states that DOD personnel should use nongovernmental standards when designing an item, unless (1) a specification is required by law or multinational treaty or (2) nongovernmental standards are technically or economically unsuitable.

Industry officials also pointed to regulatory guidance on military specifications as a problem. FAR part 10 prescribes policies and procedures for using specifications, standards, and other purchase descriptions in the acquisition process. According to some industry officials, guidance in FAR part 10 on use of commercial products was insufficient because it encouraged reliance on detailed design specifications, such as military specifications, to describe government requirements.

FAR part 7, relating to acquisition planning, and FAR part 10 were revised in October 1988 to include acquisition streamlining concepts. The revisions were intended to ensure that only necessary and cost-effective requirements are included in solicitations and contracts. FAR 7.103(e) encourages industry participation in recommending and tailoring contract requirements. FAR 10.002(c) basically reiterates this idea and adds that the objective of acquisition streamlining is to ensure that only those specifications and standards are used in contracts that are necessary.

DARC also issued a similar final rule in September 1988 which revises DFARS part 210, supplementing FAR part 10, to include acquisition streamlining concepts such as (1) excluding any requirements that do not contribute to effective acquisition management and (2) requiring that the use of specifications and standards provide "results desired," rather than "how to design" or "how to manage" concepts.

Modification of Items to Meet NDI Needs

Industry officials have stated that although the statutory preference for NDI procurement has been endorsed as an acquisition reform by both industry and the government, the benefits of NDI procurement are often limited by current DOD practices. According to these officials (1) some

NDI procurements force offerers to make substantial investments in development, testing, retooling, or facilitization to meet excessive program requirements and (2) DOD buying activities are requiring NDI offerers to use bid and proposal costs to develop existing hardware into a variant item before contract award to satisfy government needs. Vendors compare this action to the development of new systems, with the contractor incurring development costs before contract award, as opposed to NDI procurement. Vendors contend that these procedures inhibit increased competition and place unreasonable risk on industry.

Industry officials were unable to provide evidence documenting the extent to which this claimed problem impedes DOD's procurement of NDI. However, one company provided the following example of a situation in which the government required modifications of an existing item to meet government NDI needs, as part of the bid and proposal process.

- The Army Materiel Command awarded a firm fixed-price type contract for at least 764 120-millimeter mortars in June 1988. The award originally obligated \$11.8 million and is expected to eventually obligate between \$500 million to \$700 million by 1996. A company official estimated that to obtain the contract award the company and its subcontractor spent approximately \$5 million to \$10 million modifying and testing its existing 120-millimeter mortar during the proposal process. According to this official, these two companies received a total of \$390,000 from the Army, which was intended to cover test expenses. An Army contracting official responsible for this contract award stated that the Army is aware that the contractor had not been fully reimbursed for modifying the mortar and he would expect the contractor to recover its investment after award, during performance of the contract.

At the locations visited, we reviewed six NDI programs that required modifications to meet government needs. These programs had an estimated total cost of approximately \$11 billion. We found that the government was paying or had agreed to pay all costs to modify each NDI. Contracting officials at these activities told us that, in their experience, the government has paid for development costs when these costs were identified. These officials also generally stated that (1) they consider some vendor investment to be a normal risk of DOD business and (2) vendors can determine to what extent modifications are required before any serious resource commitment or decision to participate in a procurement.

DOD's December 1987 report on NDI did not identify this issue as an impediment to maximizing the procurement of NDI. OSD procurement officials told us, however, that this problem has occurred in the past and, because potential risks on contractors are unreasonable, they will consider drafting a memorandum instructing the military services not to require offerers to modify or redesign existing items at their expense in order to meet government needs.

Multiple Award Schedule

The Multiple Award Schedule (MAS) is the largest federal supply schedule¹⁰ directed and managed by GSA. MAS includes contracts made with more than one supplier for comparable supplies or services. GSA officials estimate that DOD is the largest MAS user in terms of dollar value of procurements.

Several industry associations stated that GSA's management of MAS impeded DOD's increased procurement of NDI. Specifically, they described problems associated with MAS contract negotiations, maximum order limitations, billing procedures, and reporting requirements. They stated that the effect of these problems is to limit the participation in MAS of many commercial product suppliers.

In its December 1987 report on NDI, DOD stated that it did not consider MAS to be a major NDI impediment. The DOD report also stated that (1) GSA was responsible for the rules and regulations pertaining to the schedules and (2) discussions with GSA personnel "indicate that most companies are bidding and participating in the federal supply schedule process."

Vendors and industry association officials we spoke with, including those who had cited MAS as an impediment, generally told us that GSA's management of MAS does not seriously impede DOD's procurement of NDI. Most of these officials were extremely positive about MAS and its benefits to both the government and commercial suppliers. Other officials characterized MAS as a relatively good system with some flaws which, if corrected, could result in additional benefits. They said that GSA and OFPP are reviewing the problems with MAS raised by industry officials.

¹⁰Federal supply schedules provide a simplified process for government agencies to directly order commonly-used items from commercial vendors based on previously negotiated government contracts.

Conclusions

Industry officials claimed that various regulations and practices impede DOD's procurement of NDI and that DOD's actions have not sufficiently addressed these impediments. For a variety of reasons, however, these officials were generally unable to provide data or other evidence indicating the extent or significance of the claimed impediments. They provided few examples covering the claimed impediments we reviewed.

DOD officials have taken and are taking some actions to address seven of the claimed impediments. These actions have potential for increasing the assurance that its requirements for the procurement of supplies are fulfilled through NDI to the maximum practicable extent.

Industry officials generally stated that DOD should take additional actions to alleviate the claimed impediments, but said they were pleased with DOD's actions taken to address concerns about the inappropriate use of military specifications and certain other contract provisions and government rights to technical data.

Although DOD officials have taken some actions to emphasize the procurement of NDI, we believe that DOD needs to do more to ensure that its requirements for supplies are defined and fulfilled through NDI to the maximum practicable extent. The issuance of DOD's directive, pamphlet, and manual, all of which are intended to provide internal guidance on NDI acquisition policy and procedures, has been delayed for several months because OSD personnel have not provided the level of effort that had been intended. In addition, DOD does not have data to show how much or what kind of NDI it procures or whether such procurements have increased. Such data would be useful to DOD in assessing its procurement of NDI.

DOD has provided NDI training for program managers, contracting officials, and technical requirement or engineering personnel. This training was limited, however, in terms of the lecture time devoted to NDI and the number of personnel served. DOD officials we met with said that more training on NDI is needed. DOD needs better assurance that its acquisition personnel receive sufficient instruction so that NDI is procured to the maximum practicable extent.

DOD needs to examine acquisition regulations relating to exemptions from cost or pricing data requirements based on established catalog or market prices. That is, DOD needs to examine whether changes should be made to ensure that previous sales to the government based on adequate

price competition are not treated in a manner that is unreasonable or unfair to commercial vendors.

We have no basis for concluding that changes are needed regarding other claimed impediments identified by industry because evidence on the existence or significance of the problems is unavailable and so little is known about the effects of suggested changes.

Recommendations

We recommend that the Secretary of Defense take actions to ensure that:

- DOD's revised Directive 5000.37, the proposed pamphlet on market analysis, and additional uniform guidance on NDI acquisition policy and procedures, such as DOD's draft NDI manual, are appropriately reviewed, issued, and distributed as soon as possible.
- Data are collected to measure and report on the nature and trends of NDI procurement. Decisions regarding the type and extent of data to be collected should be based on the associated costs and benefits to be derived.
- Sufficient training is provided to acquisition personnel so that commercial products and other NDI are procured to the maximum practicable extent. As a first step for accomplishing this, DOD should assess its current NDI-related training efforts.
- A DARC case is established to determine if a regulatory change is needed relating to exemptions from cost or pricing data requirements based on established catalog or market prices. That is, DARC should examine whether changes to the regulations are needed to ensure that contractors do not face possible loss of such exemptions only because the amount of previous sales of the same type of items to the government based on adequate price competition exceed established regulatory thresholds.

Objectives, Scope, and Methodology

The General Accounting Office

The Defense Acquisition Improvement Act of 1986 required that our Office evaluate DOD's actions to carry out the NDI statutory requirements. Specifically, the statute required that we:

- 1) Analyze the effectiveness of the actions taken by the Secretary of Defense to carry out the NDI statutory requirements;
- 2) Describe the programs conducted to notify DOD acquisition personnel concerning the NDI statutory requirements and train such personnel in the appropriate procedures to be used relating to NDI;
- 3) Describe any laws, regulations, and procedures that restrict maximum practicable use of NDI in DOD; and
- 4) Recommend any necessary or appropriate legislation to promote maximum procurement of NDI to fulfill DOD's supply requirements.

GAO We reviewed vendors' and industry trade associations' claimed impediments to DOD's procurement of NDI. Most of these claims had been submitted to DOD in response to its August 17, 1987, request for public *GAO* comments. After our preliminary analysis of these claims, we discussed our review approach and scope with the Senate and House Armed Services Committees. As agreed, we focused our review on nine claimed impediments relating to the following issues:

- 1) Management emphasis;
- 2) Notification and training of DOD acquisition personnel on NDI;
- 3) Cost or pricing data;
- 4) Claimed problems related to FAR part 11;
- 5) Government rights to technical data;
- 6) Use of varying contract provisions;
- 7) Use of military specifications;
- 8) Modification of items to meet government NDI needs; and
- 9) Multiple Award Schedule.

We evaluated each of these claimed impediments and attempted to (1) assess its validity and significance, (2) determine if evidence was available to substantiate it and indicate the extent of the problem, and (3) assess DOD's responses and actions taken to address it. We also agreed with the Committees to attempt to obtain examples of how these claimed impediments discouraged DOD's procurement of NDI.

To accomplish our overall objectives, we reviewed:

- FAR and DFARS guidance relating to NDI procurement and potential NDI impediments; recent and current DARC cases that address NDI impediments; and the most current draft and final versions of DOD and service regulations, directives, instructions, policy statements, and manuals relating to NDI.
- Draft and final versions of DOD's statutorily required report on NDI to the House and Senate Armed Services Committees and reports and other documents presenting the views of industry associations and vendors on impediments to DOD's procurement of commercial items and other NDI.
- Twenty-nine judgmentally selected contract awards at the Army's Tank Automotive Command, which obligated over \$25,000 and were reported as (1) based on price competition and (2) requiring certified cost or pricing data. The contract actions, which were awarded during the first half of fiscal year 1988, were identified based on DOD's DD-350 automated procurement data system. We reviewed these actions in relation to the requirements for submission of certified cost or pricing data. Based on our methodology, our results are not representative of the activity's or DOD's contract actions of this type. Except for certain information relating to the 29 awards, we did not verify the reliability of the DD-350 data.
- The availability of (1) DOD data on the amount and types of NDI procured by the military services and other DOD components and (2) industry and DOD data on the extent and effects of the claimed impediments to NDI procurement.
- Information relating to training courses and other guidance provided to technical and contracting personnel on NDI procurement; requirements and procedures related to GSA's MAS program, and data on DOD's use of the MAS program; data on DOD's use of military specifications, including such data relating to products for which commercial standards or specifications exist; and contract documents used by DOD and the military services.
- The OFPP draft legislation proposal for commercial-style acquisition procedures for use by federal agencies; and recent legislation concerning technical data rights, and other issues related to claimed NDI impediments.

In addition, we interviewed industry and industry association officials, leading economic and legal authorities on defense acquisition issues, officials within the Office of the Under Secretary of Defense for Acquisition, military service officials responsible for implementing the NDI statutory requirements, and the services' streamlining advocates, DARC staff,

contracting and technical officials at each of the procuring activities visited, DSMC and other DOD training officials, OFPP officials, and GSA officials responsible for the MAS program.

We performed our review work between April and November 1988 at the Office of the Assistant Secretary of Defense, and the Headquarters, U.S. Army, Navy, and Air Force, Washington, D.C.; the Army's Communications-Electronics Command, Fort Monmouth, New Jersey; the Army's Tank Automotive Command, Warren, Michigan; the Naval Air Systems Command, Washington, D.C.; and the Aeronautical Systems Division, Air Force Systems Command; the Air Force Logistics Command; and the Air Force Institute of Technology, Wright-Patterson Air Force Base, Ohio.

We discussed our findings with DOD officials at headquarters and at the activities visited, as well as industry and OFPP officials. Our review was performed in accordance with generally accepted government auditing standards.

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